

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 Sherrie Johnson,
4 Plaintiff

5 v.

6 Clark County School District,
7 Defendant

Case No.: 2:14-cv-02213-JAD-VCF

**Order Granting Motion to Dismiss and
Closing Case**

[ECF No. 30, 33]

8
9 Sherrie Johnson brings this employment action against the Clark County School District
10 (“CCSD”).¹ The service history of this 18-month old case is long and tortured. Despite extensions
11 of time and detailed instructions from the court, it appears that the plaintiff still has not effectuated
12 legal service on the CCSD. I therefore grant the CCSD’s motion to dismiss under FRCP 4(m) and
13 close this case.

14 **Procedural History**

15 Johnson filed this action in December 2014. Although a summons was issued for the CCSD
16 on May 6, 2015,² Johnson did not promptly file proof of service. So, on August 5, 2015, when it
17 appeared that Johnson had not served the CCSD within the 120-day window that Rule 4 of the
18 Federal Rules of Civil Procedure gave her for service,³ the court notified Johnson of its intent to
19 dismiss this case under FRCP 4(m) if she could not demonstrate that the CCSD was timely and
20 properly served or show good cause for her failure to effectuate timely service.⁴

21 Johnson responded with a document that reflects she mailed something to the CCSD via
22 certified mail and that the CCSD received that package on June 27, 2015. She states that she “sent
23 the summit [sic] out on time” and that the “CCSD received a letter 6/27/2015” but had not contacted

24 _____
25 ¹ ECF 4.

26 ² ECF 15.

27 ³ Effective December 1, 2015, the service period under 4(m) was shortened to 90 days.

28 ⁴ ECF 18.

1 her.⁵ Johnson then moved the Clerk of Court to enter a default against the CCSD.⁶ Because it
2 appeared that Johnson had not served the CCSD with process in the manner required under NRS
3 41.031(2)—by serving both the Nevada Attorney General’s office and the administrative head of the
4 CCSD with the summons and a copy of the complaint—I denied her motion for default and ordered
5 Johnson to show cause by February 15, 2016, why this case should not be dismissed without
6 prejudice under FRCP 4(m).⁷

7 Johnson responded with a certified-mail receipt purportedly signed by the CCSD on June 22,
8 2015, a statement that she gave verbal notice of the “lost documents” to a woman in the CCSD’s
9 “internal legal department,”⁸ and a notice stating that she had mailed and emailed “[i]t” to the
10 attention of the Nevada Attorney General on February 6, 2016.⁹ Although Johnson believed that her
11 efforts were sufficient to serve the administrative head of the CCSD and that she had cured the
12 defect in failing to serve the Attorney General’s office, I found this not to be the case. Neither verbal
13 communication nor dispatching the summons and complaint through email or the U.S. mail system
14 (even certified mail) is sufficient to effectuate service of process under the Nevada or federal rules;
15 both rules require personal service,¹⁰ which means hand-delivery to the individual, or to the
16 individual’s authorized agent, by someone who is at least 18 years old and not a party to the
17

18 ⁵ ECF 19 at 1.

19 ⁶ ECF 20.

20 ⁷ ECF 21.

21 ⁸ ECF 22; ECF 23.

22 ⁹ ECF 24.

23 ¹⁰ See e.g. FED. R. CIV. P. 4(j)(2) (providing that a “state-created governmental organization” like the
24 CCSD can be served by “delivering a copy of the summons and complaint to its chief executive
25 officer or . . . by serving a copy of each in the manner prescribed by that state’s law for serving . . .
26 like process on such a defendant); NEV. R. CIV. P. 4(e)(3) (providing that, “[w]henver a statute
27 provides for service, service may be made under the circumstances and in the manner prescribed by
28 the statute”); NEV. REV. STAT. § 41.031(2) (providing that, in an action against a political
subdivision of the State of Nevada, the summons and a copy of the complaint must be served upon
“(a) The Attorney General, or a person designated by the Attorney General, at the Office of the
Attorney General in Carson City; and (b) The person serving in the office of administrative head of
the named agency”).

1 litigation.¹¹ Because Johnson's efforts to serve the CCSD and Attorney General remained deficient
2 by March of this year and the time to serve process under FRCP 4(m) had expired, I quashed this
3 purported service and gave Johnson until March 31, 2016, to serve the CCSD and the Attorney
4 General in accordance with the applicable law.¹² And because Johnson has pauper status,¹³ I also
5 ordered her to use the U.S. Marshal Service to complete that service, and I provided clear
6 instructions for doing so.¹⁴ I warned Johnson that, if she failed "to properly and timely serve the
7 Clark County School District and Nevada Attorney General, this action [would] be dismissed
8 without further notice."¹⁵

9 Johnson did not use the U.S. Marshal's service, and the proof-of-service documents she has
10 filed show only that the CCSD and the Attorney General were served with a summons and an order
11 (but no complaint) on March 22, 2016,¹⁶ and March 29, 2016,¹⁷ respectively. CCSD now moves to
12 dismiss her claims because she still has not served it with complete and legal service of process (a
13 summons *and complaint*).¹⁸ Despite a warning of the consequences of failing to oppose that
14 motion,¹⁹ Johnson has filed no opposition, and the deadline for her response has long-since passed.

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20 ¹¹ See FED. R. CIV. P. 4(c)(2); *accord* NEV. R. CIV. P. 4(c).

21 ¹² ECF No. 25.

22 ¹³ ECF No. 3.

23 ¹⁴ *Id.*

24 ¹⁵ ECF No. 25 at 3.

25 ¹⁶ ECF No. 27.

26 ¹⁷ ECF No. 28 at 1.

27 ¹⁸ ECF No. 30.

28 ¹⁹ ECF No. 32.

Discussion

A. Motion to Dismiss

Rule 4(c)(1) of the Federal Rules of Civil Procedure makes it clear that “A summons must be served with a copy of the complaint,” and that the “plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m)” and “furnish[ing] the necessary copies to the person who makes service.”²⁰ Despite repeated, clear instructions, the use of the U.S. Marshal’s office, and extensions of the Rule 4(m) service period, plaintiff Sherrie Johnson has failed for a year and a half to effectuate proper legal service on the CCSD in the manner required under NRS 41.031(2)—by serving both the Nevada Attorney General’s office and the administrative head of the CCSD with the summons and a copy of the complaint. Rule 4(m) requires the court to “dismiss this case without prejudice against the defendant or order that service be made within a specified time.” Because I have already given extensions of time under Rule 4(m), and the plaintiff remains unable to effectuate proper and complete legal service, I now dismiss this complaint without prejudice under FRCP 4(m).

B. Motion for Entry of Clerk’s Default

While the CCSD’s motion to dismiss was pending, Johnson filed a request for the Clerk of Court to enter a default against the CCSD “for [d]efendant not answering 3/22/2016 Summons Received by CCSD.”²¹ The Clerk of Court is authorized to enter a party’s default if that party has failed to plead “or otherwise defend.”²² The CCSD is otherwise defending this lawsuit: it filed a timely motion to dismiss.²³ Accordingly, plaintiff is not entitled to the entry of default.

²⁰ Fed. R. Civ. P. 4(c)(1).

²¹ ECF No. 33.

²² Fed. R. Civ. P. 55(a).

²³ ECF No. 30.

Conclusion

Accordingly, and with good cause appearing, IT IS HEREBY ORDERED that the defendant's Motion to Dismiss for Insufficiency of Service of Process [ECF No. 30] is **GRANTED**; this action is **DISMISSED under Rule 4(m) without prejudice**;

IT IS FURTHER ORDERED that plaintiff's request for the Clerk to enter default against the CCSD [ECF No. 33] is **DENIED**;

The Clerk of Court is directed to **CLOSE THIS CASE**.

DATED: June 3, 2016



Jennifer A. Dorsey
United States District Judge